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September 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: **EX PARTE**
CC Docket 96-128
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996
Remand Issues

Dear Mr. Caton:

BellSouth Corporation ("BellSouth"), on behalf of itself and its affiliates, BellSouth Telecommunications, Inc. ("BST") and BellSouth Public Communications, Inc. ("BSPC"), by counsel, hereby responds to the faulty reasoning, and inaccurate representations about BSPC's business practices contained in reply comments filed by Oncor Communications ("Oncor") and the IPSP Ad Hoc Committee for Consumer Choice ("IPSP") on September 9, 1997. Oncor did not file opening comments in this proceeding; IPSP apparently chose to withhold from its August 26 comments, but attach to its September 9 reply comments, a copy of a July 30, 1997 letter it wrote to the Common Carrier Bureau in which it accuses BellSouth and Ameritech of "strong arm tactics."

Oncor argues that Bell operating company ("BOC") payphone service providers, having been "awarded the right" to "contract directly with premises owners regarding the selection of presubscribed IXCs from their payphones," are not entitled to a Commission-prescribed compensation scheme "either to establish compensation levels or to ensure receipt of compensation by the LEC payphone providers."[1] Oncor then argues that BSPC's business

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Remand Issues)*, CC Docket No. 96-128, Reply Comments of Oncor at 5-6 (Sept. 9, 1997).

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practices demonstrate "that the marketplace will establish prices for 0+ call compensation and that LEC payphone providers will be fully able to establish mechanisms to receive that compensation." Oncor erroneously concludes that following the interim (flat-rate) compensation period "no further Commission action regarding 0+ compensation will be necessary or appropriate."[2] Oncor completely ignores the fact that, whatever prospective ability BOC payphone providers may have to negotiate with location providers on the selection of the presubscribed interexchange carrier, this new-found freedom does nothing to address the multitude of BOC payphones where, because of existing location provider contracts with IXCs, BOCs receive no compensation at all for 0+ calls. It is thus inappropriate to conclude that the market is ensuring that BOCs are being fairly compensated on 0+ calls.

The RBOC/GTE/SNET Payphone Coalition ("Coalition") addressed a similar challenge to the Commission's requirement that 0+ calls from BOC and GTE payphone be fairly compensated, and BellSouth incorporates those arguments and authorities by reference herein.[3] Essentially, the BOCs and GTE were for many years unable to negotiate for compensation on 0+ calls and calls from inmate payphone because of consent decrees; during this quarantine interexchange carriers entered into exclusive long-term contracts with location owners that are grandfathered under Section 276 of the 1996 Act; therefore, the BOCs and GTE are effectively precluded from obtaining compensation for these calls. Not one party appealed the Commission's inclusion of BOC and GTE 0+ calls in the permanent compensation scheme; in fact, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission for failing to provide per-call compensation on those calls during the interim period. In any event, if the market does provide compensation, there will be no compensation paid as a result of the Commission's rule.

And perhaps more importantly, Oncor's discussion of BSPC's business practices is both irrelevant to its erroneous argument and intentionally misleading. In its reply comments, Oncor states ". . .BellSouth -- one of the first LECs to contract with location providers -- already has begun to impose a $15.00 per month charge per payphone on those premises owners who do not contract with BellSouth regarding the selection of interexchange carriers."[4] The implication is that BSPC imposes such charges on all premises owners for all payphones. This is not true; the charge only applies to a small fraction of BSPC's payphone locations, primarily those locations that formerly subscribed to BST's semi-public pay telephone service. Although Oncor cites as the source of its information MCI's comments on the remand issues in this proceeding, it is in fact Oncor which first accused BellSouth of assessing such charges on all payphone locations in a formal complaint first filed on May 30, 1997.[5] BellSouth has formally responded to Oncor's

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[2] *Id.* at 6.

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Remand Issues)*, CC Docket No. 96-128, Reply Comments of the RBOC/GTE/SNET Payphone Coalition at 51-52 (Sept. 9, 1997).

[4] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Remand Issues)*, CC Docket No. 96-128, Reply Comments of Oncor Communications at 6 (Sept. 9, 1997).

charges in its Opposition to Emergency Motion for Interim Order to Show Cause and to Cease and Desist, filed June 6, 1997 and its Answer to Oncor's formal complaint, filed July 24, 1997, the contents of which are formally incorporated by reference herein.

On July 30, 1997, IPSP filed a letter with the Commission's Enforcement Task force in which it echoed Oncor's vague and incorrect allegations concerning the scope and extent of the $15.00 charge. IPSP attached a copy of this letter to its Reply Comments in this proceeding. BSPC responded in writing to these charges in a letter filed with the Secretary on September 9 that was copied, as well, to each member of the Task Force. Thus, as BellSouth has explained to this Commission on at least three previous occasions, there is no truth to the notion that BellSouth, as a matter of business practice with respect to each of its payphones, "impose[s] a surcharge on location providers when the provider does not choose the RBOC's preferred carrier."[6] At the very least, this assertion is the subject of a contested factual dispute in a pending formal complaint proceeding before this Commission. To clarify the record in this proceeding on this point, which has been erroneously put forward by Oncor, MCI, Sprint and IPSP, BellSouth attaches hereto the September 9, 1997 response of BSPC to the IPSP letter.

Very truly yours,

Theodore R. Kingsley

Attachment

cc: John Muleta (w/attachment)
Robert Spangler (w/attachment)
Rose Crellin (w/attachment)

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[5] *Oncor v. BellSouth*, No. E-97-30 (filed May 30, 1997).

[6] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Remand Issues)*, CC Docket No. 96-128, Reply Comments of Sprint Corporation at 29 (Sept. 9, 1997). Sprint relies on MCI's unsupported and erroneous allusion to this "practice." *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Remand Issues)*, CC Docket No. 96-128, Comments of MCI at 9 (Sept. 9, 1997). The source of confusion is undoubtedly the erroneous allegation to this effect contained in Oncor's May 30 formal complaint.

Gail F. Barber
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 9, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: July 30, 1997, Letter from Helein & Associates, P.C. Entitled "Action Required on Payphone Competition - Regional Bell Operating Companies"

Dear Mr. Caton:

BellSouth Public Communications, Inc. (BSPC), the structurally separate payphone service provider affiliate of BellSouth Telecommunications, Inc. (BST), by counsel, responds to the referenced letter addressed to the Enforcement Task Force. The referenced letter purports to be submitted to the Task Force on behalf of certain unnamed "independent payphone service providers," belonging to the "IPSP Ad Hoc Committee for Consumer Choice" (IPSP). The IPSP letter, which complains of alleged "strong-arm tactics" by both BellSouth and Ameritech, is riddled with misstatements, half-truths and vague allegations. Indeed, nowhere in the letter are the actual principals of the "Ad Hoc Committee" identified, nor is it clear which segment of the industry the "Ad Hoc Committee" represents.

As more specifically set out below, BellSouth vigorously denies any wrongdoing and asserts that it is in full compliance with § 276 of the Telecommunications Act and the FCC orders relating thereto.[1]

First, the IPSP letter claims that "BellSouth requires customers to use the long distance carrier (Teltrust) BellSouth selected"; that BellSouth imposes a $15 charge if

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[1] First Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541 (1996)("Report and Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996), remanded in part and vacated in part, Illinois Pub. Telecom. Ass'n v. FCC, No. 96-1394 (D.C.Cir. July 1, 1997) (both orders together "Payphone Reclassification Proceeding").

customers refuse to use Teltrust, and that BellSouth does not pay commissions where Teltrust has been selected as the presubscribed interexchange carrier (PIC). This allegation is untrue. BellSouth does not require its customers (location providers) to select any particular carrier for payphone service. Since April 16, 1997 (the date BST's CEI plan was approved, pursuant to the Commission's orders implementing Section 276), BSPC has solicited location providers to permit BSPC to select and contract with a preferred IXC on the location provider's behalf. Teltrust is BSPC's preferred carrier at this time. No charge is made to the location provider for placement of public telephones, whether or not Teltrust is selected by the location provider as the PIC. The payment of commissions to a location provider is a matter of contract and is based on a number of business factors, including the economic impact to BSPC of the PIC selection.

The IPSP letter makes the same allegations with regard to "semi-public phones." BSPC has no semi-public telephones. Since the Congressionally mandated deregulation of the payphone industry, BST no longer offers a tariffed semi-public telephone service. BSPC does offer a deregulated, detariffed service marketed as "Business Payphone Service." This service provides payphone service for a monthly maintenance fee at locations where there is insufficient traffic to support a competitive payphone. Many of the location providers who formerly subscribed to BST's semi-public payphone service now contract with BSPC for Business Payphone Service.

The common denominator among these "business payphones"--like their predecessors, semi-public payphones--is that they generate insufficient traffic to cover their costs through local usage and service fees. Recent regulatory reforms, and particularly Congress's mandate that there be no subsidization of local exchange carrier (LEC) payphone service from local exchange and exchange access service revenues, necessitated the removal of semi-public payphone lines from BST's tariffs. Rather than removing these phones entirely,[2] however, BSPC has attempted to continue to service this niche market by providing location providers with Business Payphone Service. BSPC initially anticipated that, when authorized to do so, it would be able to make up the shortfall between its costs, including the rates it pays BST at arms length for a basic payphone line, and the Business Payphone Service monthly maintenance fee by negotiating with an IXC to carry the interLATA traffic from the Business Payphones. But where the location provider chooses to select an interexchange carrier itself, BSPC is unable to make up the shortfall. BSPC thus decided to offer its Business Payphone Service on a two-tier

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2 Other IPSPs simply "will not install payphones in locations that do not generate substantial numbers of coin calls." *Remand Issues Involved with the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Comments of Peoples Telephone Company, Inc. at 6 (Aug. 26, 1997).

basis and to charge a monthly fee of $15 to location providers who elected not to appoint, or were precluded by contract from appointing, BSPC as their agent for the purpose of selecting the PIC.

Location providers who have their own arrangement with an IXC have the opportunity to make up the $15 (and more) in commissions received from the IXC. (The location provider also could negotiate to obtain a payphone from a competitive payphone provider.) There is no reason why BSPC should subsidize the receipt of such commissions by supplying the location provider with a payphone that does not recover its costs. If BSPC will not receive a commission from the interexchange carrier, it must recoup those lost revenues directly from the location provider.

BSPC could have achieved exactly the same economic result by providing Business Payphone Service for $15 more and offering a $15 discount to customers who selected BSPC as their agent. Such a fee structure would have clearly passed muster under the Payphone Reclassification Proceeding, which contemplated that Bell Company payphone service providers such as BSPC would pay commissions to location providers. See Report and Order at ¶¶ 238-241. Since there is no substantive difference between these two fee structures, there is no basis for a claim that the $15 fee is an unjust and unreasonable practice.

With respect to the claim regarding an unnamed RV Park operator in Georgia, BSPC does not have sufficient information, without the telephone number of the station in question, to respond to the allegation. It is unknown whether this is regular public telephone service or Business Payphone Service. Without knowing the specifics, BSPC is unable to verify these rates.

IPSP has also made vague references to BSPC's marketing materials as being improper. BSPC vigorously denies that its marketing materials create a false impression that customers are required by law to reevaluate their PIC. Since the IPSP letter does not provide any specific information regarding the marketing materials in question, it is impossible for BSPC to respond to this statement in detail. It is equally impossible to respond to an allegation that BellSouth's correspondence conceals that it is soliciting a change in a PIC without any specific information. As the Commission explained in its payphone orders, Section 276 of the 1996 Telecommunications Act granted Bell Company payphone service providers "the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier." Report and Order at ¶ 243. BSPC contractual and publicity materials comport with both the spirit and the letter of the Payphone Reclassifcation Proceeding.

With regard to the "specifics" to which IPSP does refer, IPSP once again omits any specific identifying information that would enable BSPC to investigate the claims. The IPSP letter refers to a discussion regarding a PIC change, but does not say that the phones were BellSouth payphones. BSPC's policy with respect to PIC selection, as stated earlier, fully comports with the letter and the spirit of the Payphone Reclassification Proceeding. It is unclear to whom the line was PIC'd at the time of the call. It is also unclear whether the call was to BST's office or BSPC's. If the call was from an IPSP, there is no reason for an independent payphone provider to call BSPC since it would be a competitor to BSPC, and BSPC would be unable to change the PIC on a competitor's phone. Once again IPSP's reference is so vague that it is impossible to respond.

With the second "specific" complaint regarding a Marathon, Florida business, it is again not clear how BSPC could deal with a competing IPSP. In any event, it is not BSPC's policy to remove payphones from premises based solely on the selection of the PIC carrier but to make a business decision, as any IPSP would, based on a number of relevant factors as to whether it is in BSPC's interest as a payphone service provider to provide a payphone at a particular location. Neither is it BellSouth's policy to change the PIC without the authorization of the location provider.

If counsel for the IPSP Ad Hoc Committee were to forward to me the "[s]upportive documentation and affidavits" which he states "are available," but which have not been provided to either BellSouth or the Commission, BSPC would be able to investigate any actual event that may have occurred.

Very truly yours,

Gail L. Barber
JRK

cc: Enforcement Task Force:
Susan Fox, Interim Chair, Office of General Counsel
Barbara Esbin, Assoc. Bureau Chief, Cable Services Bureau
Mary Beth Richards, Deputy Bureau Chief, Common Carrier Bureau
John Muleta, Deputy Bureau Chief, Common Carrier Bureau
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